

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO DIVERSIFIED)	ADMINISTRATIVE
OPERATIONS OF LOCAL EXCHANGE)	CASE NO. 340
TELEPHONE COMPANIES)	

O R D E R

This matter arising upon petition of Foothills Rural Telephone Cooperative Corporation, Inc. ("Foothills RTCC") filed January 13, 1992 for confidential protection of Exhibits 1 and 3 of its responses to the Commission's Order of October 25, 1991 on the grounds that disclosure of the information would constitute an invasion of Foothills RTCC's privacy and that disclosure of the information is likely to cause Foothills RTCC competitive injury, and it appearing to this Commission as follows:

As part of its responses to the Commission's Order of October 25, 1991, Foothills RTCC has attached Exhibits 1 and 3 which it seeks to protect as confidential. Exhibit 1 contains journal entries which disclose Foothills RTCC's exact dollar investments in the capitalization of subsidiary corporations. Exhibit 3 provides excerpts from Foothills RTCC's corporate board meeting minutes which contain information concerning the exact amount of the financial investment in the subsidiary corporations, as well as the projected capital investment cost to be incurred for construction and operation thereafter.

The information sought to be protected is not known outside of Foothills RTCC's business and is known only by Foothills RTCC's employees who have a legitimate business need to know and act upon the information. Foothills RTCC seeks to preserve and protect the confidentiality of the information by all appropriate means.

Information filed with the Commission is required by KRS 61.872(1) of the Kentucky Open Records Act to be maintained for public inspection unless specifically exempted by statute. Exemptions from disclosure are provided by KRS 61.878(1). That section of the statute exempts 10 separate categories of information, including information of a personal nature and certain commercial information confidentially disclosed to the Commission.

The exemption for personal information is provided in KRS 61.878(1)(a). That subsection exempts "information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Foothills RTCC maintains that this exemption applies to corporations as well as natural persons. The statute, however, does not support Foothills RTCC's contention.

The clear purpose of KRS 61.878(1)(a) is to protect the rights of privacy of parties submitting information to a public agency. A comparable exemption is found in the federal Freedom of Information Act, 5 U.S.C. §552(b). Section (6) of that section exempts "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." In construing this statute, the

court in Simms v. Central Intelligence Agency, 642 F.2d 562, 573 (C.A.D.C. 1980) held that "exemption (6) was developed to protect intimate details of personal and family life, not business judgments and relationships."

The decision in Simms, supra, is in accord with the law in Kentucky concerning the right of privacy. In Maysville Transit Company v. Ort, 296 Ky. 524, 177 S.W.2d 369, 370 (1943), the court, in commenting upon the right of privacy, noted that the "right is designed primarily to protect the feelings and sensibilities of human beings, rather than to safeguard property, business or other pecuniary interests." Thus, corporations cannot claim the right of privacy in information and seek protection of that information under KRS 61.878(1)(a).

The exemption for certain commercial information confidentially disclosed to the Commission is provided in KRS 61.878(1)(b). That section of the statute protects information filed with a public agency which "if openly disclosed would permit an unfair advantage to competitors of the subject enterprise." To qualify for this exemption, it must be established that the information is not publicly known and that disclosure is likely to cause substantial competitive injury to the party from whom the information was obtained. To satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

The information sought to be protected consists of projected costs, capital expenditures, and actual purchase costs. Public utilities are required to include such information in their periodic reports filed with the Commission which are a matter of public record. To the extent that such information is presently available from other sources, it is not entitled to protection as confidential. Additionally, to the extent that such information consists of projections by Foothills RTCC, it is presented in summary form and does not contain sufficient detail to have significant competitive value. Therefore, the petition for confidential protection should be denied.

This Commission being otherwise sufficiently advised,

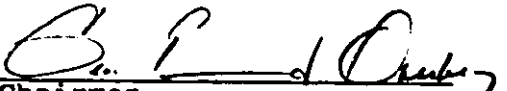
IT IS ORDERED that:

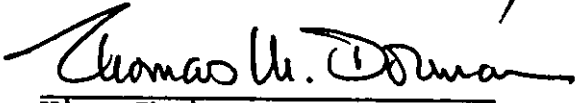
1. The petition to protect as confidential Exhibits 1 and 3 to Foothills RTCC's responses to the Commission's Order of October 25, 1991 be and is hereby denied.

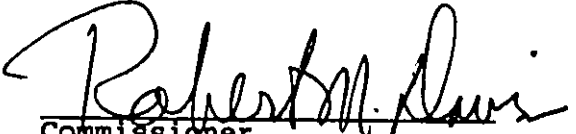
2. The information sought to be protected shall be held and retained by this Commission as confidential and shall not be open for public inspection for a period of 20 days from the date of this Order, at the expiration of which it shall be placed, without further Orders herein, in the public record.

Done at Frankfort, Kentucky, this 18th day of February, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director